

Disciplinary and Other NASD Actions

REPORTED FOR NOVEMBER

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of October 2006.

Firms Expelled, Individuals Sanctioned

Perpetual Securities, Inc. (CRD #36841, Forest Hills, New York), Cathy Yiping Huang (CRD #2370253, Registered Principal, Holmdel, New Jersey) and Youwei Paul Xu (CRD #2370245, Registered Principal, Holmdel, New Jersey). The firm was expelled from NASD membership, and Huang and Xu were barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) default decision. The sanctions were based on findings that the firm conducted a securities business during a suspension for failing to pay an arbitration award. The findings stated that Huang and Xu failed in their duties as the firm's principals to ensure that the firm promptly complied with its suspension. The findings also stated that Huang failed to timely and fully respond to NASD requests for documents and information. The respondents appealed NASD's findings and sanctions to the Securities and Exchange Commission (SEC). (NASD Case #C9B20040059)

Yankee Financial Group (CRD #17966, Melville, New York) and Richard Francis Kresge (CRD #729077, Registered Principal, Bay Shore, New York). The firm was expelled from NASD membership and Kresge was barred from association with any NASD member in any capacity. The NAC also ordered the firm and Kresge to pay restitution to ten customer witnesses. The NAC imposed the sanctions following appeal of an OHO decision. The firm and Kresge were ordered to pay \$3,866,426, plus interest, and realized and/or unrealized losses in the shares of a security in restitution to public customers. The sanctions were based on findings that the firm and Kresge failed to establish a reasonable system of supervision and failed to supervise the activities of firm representatives, who engaged in fraudulent solicitations and who made unsuitable recommendations to numerous customers of the firm. In these regards, the findings stated that the firm and Kresge failed to make reasonable efforts to determine that supervisory personnel and registered representatives were qualified, failed to ensure that the supervisory system reflected the significantly increased risk profile of the firm's business, failed to distribute supervisory procedures, failed to designate an office as an

Office of Supervisory Jurisdiction (OSJ), and failed to implement heightened supervisory procedures for certain representatives. The findings also included that the firm and Kresge were personally responsible for firm representatives' violations of NASD antifraud and suitability rules. NASD found that the firm and Kresge failed to report customer complaints to NASD, and failed to register an individual as a principal and a representative with NASD.

Kresge has appealed this decision to the SEC, and the bar is in effect pending consideration of the appeal. (NASD Case #CMS20030182)

Firms and Individuals Fined

Energy Securities, Inc. (CRD #101220, East Dundee, Illinois) and Lawrence Reed Buettner (CRD #2535892, Registered Principal, Village of Lakewood, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which they were fined \$15,000, jointly and severally. The firm's exemption from the requirement to qualify and register an individual as a limited principal-financial and operations was revoked. Without admitting or denying the findings, the firm and Buettner consented to the described sanctions and to the entry of findings that the firm, acting through Buettner, used the mails or other instrumentalities of interstate commerce to effect transactions in securities when it failed to maintain the minimum required net capital. (NASD Case #20050014461-01)

First New York Securities L.L.C. (CRD #16362, New York, New York) and Michael Lawrence Friedman (CRD #214675, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were each censured and fined \$100,000. The firm was also required to revise its written supervisory procedures regarding supervision of its trading department. Without admitting or denying the findings, the firm and Friedman consented to the described sanctions and to the entry of findings that the firm failed to detect a hedge fund manager's improper short selling. The findings stated that the firm failed to detect that it had executed short sales without making or annotating affirmative determinations that the manager and the hedge fund could borrow the securities, or otherwise provide for their delivery by the settlement date. The findings also stated that the firm

failed to report the correct symbol to the Automated Confirmation Transaction ServiceSM (ACTSSM) that indicated that securities sell transactions were short sales. The findings also included that the firm effected short sales in securities for a proprietary account and a hedge fund customer, but failed to annotate or make an affirmative determination that the firm and the hedge fund could borrow the securities, or otherwise provide for their delivery by the settlement date. NASD found that the firm's supervisory system failed to provide for adequate and reasonable supervision of the hedge fund manager or the firm's trading department. (NASD Case #20050002450-03)

Torrey Pines Securities, Inc. (CRD #17120, Del Mar, California) and Jack Clark Smith, Jr. (CRD #427869, Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the firm and Smith consented to the described sanctions and to the entry of findings that, in its membership agreement, the firm, acting through Smith, represented to NASD that it would not receive securities or customer checks payable to the firm. However, during the relevant period of time, the firm, acting through Smith, received checks payable to the firm rather than to its clearing firm. The findings stated that the firm, acting through Smith, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain the minimum required net capital. The findings also stated that the firm, acting through Smith, amended its membership agreement to prohibit its receipt of customer checks payable to the firm, but failed to enforce it and, as a result, continued to receive customer checks payable to the firm. (NASD Case #E0220050158-02)

Firms Fined

A.G. Edwards & Sons, Inc. (CRD #4, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to provide a report to NASD attesting that it has given notice to all customers whose relationship with the firm is still controlled by any agreement containing the attorney's fee clause at issue, by letter, that the firm will not take any action to

enforce that clause. The letter also sets forth the details of notifications to customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it included an attorney's fee clause—which provided that the customer would be responsible for the firm's costs and attorney's fees in the event the customer brings a claim against the firm, regardless of whether or not the customer is successful in pursuing the claim in violation of NASD rules—in its customer agreements. **(NASD Case #EAF0400790002)**

Anderson & Strudwick, Incorporated (CRD #48, Richmond, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding SEC Rule 11Ac1-6. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to make a complete report on its routing of non-directed orders in covered securities publicly available within one month after the end of each quarter. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 11Ac1-6. **(NASD Case #20050000650-01)**

AXA Advisors, LLC (CRD #6627, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to the Trade Reporting and Compliance Engine (TRACE) transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 45 minutes of the time of execution, and incorrectly reported purchases in TRACE-eligible securities to TRACE. The findings stated that the firm failed to preserve brokerage order memoranda containing all the information required by the applicable rules for a period of no less than three years, with the first two in an accessible place. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. **(NASD Case #20050001784-01)**

Bulltick, LLC (CRD #104005, Mexico City, Mexico) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to enforce its anti-money laundering (AML) program in a manner reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder. The findings stated that the firm opened customer accounts that did not fully comply with the requirements of its AML program, and failed to obtain certain required information in connection with the customer accounts. **(NASD Case #E062004016101)**

Cantor Fitzgerald & Co. (CRD #134, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted to the Order Audit Trail SystemSM (OATSSM) reports with respect to equity securities traded on the NASDAQ Stock Market that were not in the electronic form prescribed by NASD and were repairable. The findings stated that OATS rejected the reports, and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace the reports. The findings also stated that the firm published quotations in the OTC Equity securities or directly or indirectly submitted the quotations for publication in a quotation medium, but failed to have the documentation SEC Rule 15c2-11(a) required in its records, did not have a reasonable basis under the circumstances for believing that the information was accurate in all material respects, that the sources of the information were reliable and that the quotations did not represent a customer's indication of unsolicited interest. The findings also included that the firm failed to file a Form 211 with NASD at least three business days before its quotations were published or displayed in a quotation medium. NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with SEC Rule 15c2-11 and NASD Marketplace Rule 6740. **(NASD Case #20050018123-01)**

Feldman Securities Group, L.L.C. (CRD #39385, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it published research reports that were deficient. The findings stated that the firm's written supervisory procedures were incomplete in certain respects and that the firm did not fully implement other procedures with regard to its dissemination of research reports containing disclosure deficiencies. The findings also stated that the firm did not balance favorable discussions of securities identified in research reports with sufficient disclosures of risks associated with an investment in the securities. The findings also included that the firm did not fully ensure compliance with SEC Regulation AC, in that some research reports did not include an Analyst Certification. **(NASD Case #E8A2005007601)**

Fieldstone Services Corp. (CRD #27851, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$150,000 and required to review its systems and procedures with regards to the preservation of electronic mail communications for compliance with NASD rules and federal securities laws and regulations. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm failed to maintain and preserve all of its email communications, as required. The findings stated that the firm used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital. The findings also stated that the firm failed to file its annual audited report for one year in a timely manner. The findings also included that the firm failed to comply with its membership agreement, which permitted the firm to engage in transactions involving fixed-income and private placement securities by engaging in equity transactions. NASD found that the firm failed to establish, maintain and enforce written procedures to supervise the types of business in which it engaged. NASD also found that the equity trade tickets the firm executed failed to contain either an order receipt or an order entry time, and customer confirmations issued to public customers failed to indicate that transactions were riskless principal trades. **(NASD Case #E102004015503)**

Fox & Company Investments, Inc. (CRD #18517, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely and accurately update the Uniform Termination Notice for Securities Industry Termination (Form U5) for former registered representatives for events that required regulatory disclosure. The findings stated that the firm failed to timely and accurately report municipal bond transactions to the MSRB, and erroneously made reports to the MSRB for transactions that did not actually occur. The findings also stated that the firm failed to make and keep current order tickets for municipal securities transactions. The findings also included that the firm failed to adopt and maintain written supervisory procedures reasonably designed to achieve compliance with MSRB rules. **(NASD Case #E3A20050043-02)**

Gilford Securities Incorporated (CRD #8076, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$30,000 and required to revise its written supervisory procedures regarding TRACE reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities to TRACE, and failed to report the lower of yield to call or yield to maturity for transactions in TRACE-eligible transactions to TRACE. The findings stated that the firm, when it acted as principal for its own account, failed to provide its customers with written notification disclosing the yield at which the transactions were effected. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. **(NASD Case #20050001803-01)**

Goldman Sachs Execution & Clearing, L.P. (CRD #3466, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$28,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to classify an order correctly as a market limit order, failed to report accurate order execution data and improperly published statistics for all limit order groups.

The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning order handling under SEC Rule 605, best execution, anti-intimidation, trade reporting, sales transactions and SEC Reg. SHO, and soft dollars. (NASD Case #20050023633-01)

Hunter Securities Corp. (CRD #13134, Maplewood, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in municipal securities to the MSRB within 15 minutes of the execution time. (NASD Case #20050034103-01)

INTL Trading, Inc. (CRD #45993, Altamonte Springs, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures regarding compliance with SEC Rule 15c2-11 and NASD Marketplace Rule 6740. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted quotations on a quotation medium and did not have the required documentation representing a customer's indication of unsolicited customer interest in its records. The findings stated that the firm failed to file a Form 211 with NASD at least three business days before the firm's quotations were published or displayed in a quotation medium. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 15c2-11 and NASD Marketplace Rule 6740. (NASD Case #20050030714-01)

Knight Capital Markets, LLC (CRD #38379, Purchase, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and required to revise its written supervisory procedures regarding NASD Marketplace Rule 5220(e). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, as an intermarket trading system/ computer assisted execution system (ITS/CAES) market

maker, it purchased or sold ITS/CAES securities whether in a principal capacity or as an agent at a price lower than the bid or higher than the offer displayed from an ITS participant exchange or ITS/CAES market maker. The findings stated that the firm, as a registered market maker in securities, was presented orders at its published bid or offer in an amount up to its published quotation size, and failed to execute the orders upon presentment, thereby failing to honor its published quotation. The findings also stated that the firm, an ITS/CAES market maker, failed to maintain continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by NASD. The findings also included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules. (NASD Case #20050000863-01)

Morgan Keegan & Company, Inc. (CRD #4161, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$29,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely file amendments to Uniform Applications for Securities Industry Registration or Transfer (Forms U4), and failed to timely file Forms U5 with NASD. (NASD Case #2005002050701)

Morgan Keegan & Company, Inc. (CRD #4161, Memphis, Tennessee) was censured and fined \$22,300. The sanctions were based on findings that the firm sold into the OTC Bulletin Board market, shares of an unregistered security and transferred shares from a public customer's trust account into other accounts at the firm using means or instruments of transportation or communication of interstate commerce. The findings stated that the firm failed to establish that the security was exempt from SEC and NASD registration requirements. (NASD Case #CAF040073)

Morgan Stanley DW Inc. (CRD #7556, Purchase, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$500,000 (to be paid jointly to NASD, the American Stock Exchange and the New York Stock Exchange) and required to revise its written supervisory procedures regarding short interest reporting. Without admitting or denying the findings, the firm consented to the

described sanctions and to the entry of findings that it utilized “z indicators” in its Security Master File for securities traded on multiple exchanges, but the firm’s short interest reports short positions omitted securities labeled with the “z indicator.” The findings stated that the firm failed to report its short interest positions in preferred and affiliates’ securities. The findings also stated that the firm failed to reasonably and properly supervise its process for reporting short interest to NASD, in that it failed to detect inaccuracies associated with its short interest reports and failed to have an adequate system of follow up and review for compliance with self-regulatory organization rules with respect to short interest reporting. The findings also included that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning short interest reporting. (NASD Case #20050024147-01)

Oddo Securities Corporation (CRD #45104, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to implement an AML program that was reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of Treasury. (NASD Case #E102005032601)

Pond Equities (CRD #30934, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain the minimum required net capital. The findings stated that the firm failed to report the correct symbol indicating the firm’s capacity as either principal or agent to ACT in numerous transactions; it reported transactions without the .T modifier, used the incorrect capacity and failed to report transactions in debt securities reportable under TRACE. The findings also stated that the firm failed to timely and properly report OTC equity security transactions through ACT, and failed to report transactions with the correct order identifier when reporting transactions in OTC equity transactions to ACT, that were executed outside normal

market hours. The findings also included that the firm failed to report transactions to ACT for transactions in eligible securities listed on a national exchange, which were traded otherwise than on a national securities exchange, failed to report transactions to ACT with the correct order identifier and failed to timely report transactions to ACT for transactions in eligible securities listed on a national exchange that were traded otherwise than on a national securities exchange. NASD found that the firm failed to timely and properly report transactions in NASDAQ National Market and NASDAQ SmallCap Market securities through ACT, failed to record the reported price or the difference between the reported price and the price to the customer on its order confirmations, and the order confirmations failed to disclose that the firm acted as a market maker in that security. NASD also found that the firm’s two inter-dealer transactions were not reported to the MSRB. (NASD Case #ELI2004014601)

Reid & Rudiger LLC (CRD #47263, New York, New York) submitted an Offer of Settlement in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to properly time stamp order tickets, in that the tickets did not contain a time stamp indicating the time the orders were received, and failed to show the time in seconds on order entries. The findings stated that the firm failed to maintain AML procedures that were approved in writing by senior management and did not provide for prompt notification to NASD regarding designation and identification of individuals responsible for monitoring the AML program. The findings also stated that the firm’s Customer Identification Program failed to address verification procedures. (NASD Case #E1020040343-01)

Seaboard Securities, Inc. (CRD #755, Florham Park, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding SEC Rule 606, best execution, SEC Rule 605, trade reporting, affirmative determination, Chinese walls, and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline transactions in eligible securities in the NASDAQ Market Center within 20 minutes after execution and failed to report

the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity. The findings stated that the firm failed to correctly report riskless principal transactions in last sale reports of transactions in OTC equity securities through the NASDAQ Market Center. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 606, best execution, SEC Rule 605, trade reporting, affirmative determination, Chinese walls, and books and records. **(NASD Case #20050002610-01)**

SF Investments, Inc. (CRD #6564, Highland Park, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it made untimely TRACE reports, reported the incorrect volume and reported transactions it was not required to report. The findings stated that the firm reported the time of municipal securities transactions inaccurately and late, reported transactions it was not required to report, reported the volume inaccurately in a transaction and failed to report transactions. **(NASD Case #E8A2005018701)**

Sharebuilder Securities Corporation (CRD #45744, Bellevue, Washington) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$140,000 and required to file all advertisements used on the firm's Web site or on the Internet with NASD at least 10 days prior to their first use for one year. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it committed several violations of NASD's advertising rules by means of various false and misleading statements regarding its services, including predictions of performance, incomplete and unbalanced comparisons with its Web site and Internet advertising. The findings stated that these misleading advertisements were available for widespread use by the investing public, not only for those who were the firm's customers. The findings also stated that the firm failed to file Exchange Traded Funds (ETF) related communications with NASD as it was required to do. **(NASD Case# 2006003887001)**

Tower Square Securities, Inc. (CRD #833, Hartford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$85,000 and required to review its written supervisory procedures and establish a supervisory system reasonably designed to achieve compliance with laws, regulations and rules concerning pre-registration Web CRD searches. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its supervisory system and procedures were not reasonably designed to ensure that the firm obtained and/or retained required written consent for pre-registration searches on Web CRD. The findings stated that, as the result of supervisory deficiencies, the firm failed to obtain and/or retain the required written consent in connection with its pre-registration searches of individuals, many of whom were not seeking employment with the firm or were seeking employment with an affiliated broker-dealer and not the firm. With respect to the latter searches, the individuals seeking employment with an affiliated broker-dealer had consented to a pre-registration search by the affiliated broker-dealer, but not by Tower Square. The findings also stated that the firm failed to implement a written AML program reasonably designed to achieve compliance with the requirements the Bank Secrecy Act and the regulations promulgated thereunder imposed. **(NASD Case #E112005002601)**

Wells Fargo Brokerage Services, L.L.C. (CRD #16100, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that when it reported corporate debt transactions to TRACE, the firm, which was acting in a principal capacity, incorrectly reported a commission charge. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning accurate TRACE reporting. **(NASD Case #20050001807-01)**

Individuals Barred or Suspended

John Ivey Amon, Jr. (CRD #4489, Registered Representative, Goldsboro, North Carolina) submitted a Letter of Acceptance, Waiver and Consent

in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for four months. The fine must be paid before Amon reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Amon consented to the described sanctions and to the entry of findings that he re-allocated a public customer's sub-account holdings for a variable annuity totaling \$13,000 from a guaranteed fixed rate to equity mutual funds without the customer's knowledge or authorization. The findings stated that Amon agreed to reimburse the customer for his incurred losses as a result of the unauthorized transactions, wrote a check for \$577.56, and then had these funds deposited directly into the customer's annuity without disclosing the settlement to his member firm.

The suspension in any capacity is effective from October 16, 2006 through February 15, 2007. **(NASD Case #2005002553601)**

Maxi Joel Arias (CRD #4556162, Registered Representative, Bronx, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Arias consented to the described sanction and to the entry of findings that he falsified customer signatures on insurance applications. The findings stated that Arias failed to respond to NASD requests for information. **(NASD Case #2006004268401)**

Robert Francis Arimenta, Sr. (CRD #7103, Registered Supervisor, Princeton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any principal capacity for three months. The fine must be paid before Arimenta reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Arimenta consented to the described sanctions and to the entry of findings that his member firm, acting through Arimenta, did not have an adequate supervisory system and procedures that were reasonably designed to oversee the trading activities of its registered representatives at the firm's Financial Advisory Center (FAC), referred to within the firm as

Investment Service Advisors (ISAs). The findings stated that the firm, acting through Arimenta, failed to establish and maintain a supervisory system and written procedures reasonably designed to achieve compliance with NASD Rule 2830, in that the FAC conducted sales contests that violated the non-cash compensation rule. The findings also stated that the firm, acting through Arimenta, allowed "lead advisors" to exercise certain direct supervisory responsibility over ISAs when the majority of the lead advisors were not properly registered as principals and lacked sufficient qualifications to supervise ISAs on their teams.

The suspension in any principal capacity will be in effect from October 2, 2006 through January 1, 2007. **(NASD Case #E9B2003042105)**

Robert Lee Banks (CRD #4909350, Associated Person, Zuni, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Banks failed to respond to NASD requests for information. The findings stated that Banks willfully failed to disclose material information on his Form U4. **(NASD Case #2005000524901)**

Steven Anthony Bencivenga, Jr. (CRD #3000161, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement in which he was fined \$15,000, ordered to pay \$553 in restitution to public customers and suspended from association with any NASD member in any capacity for five months. Without admitting or denying the allegations, Bencivenga consented to the described sanctions and to the entry of findings that he effected securities transactions in public customers' account without their prior knowledge, authorization or consent, and without having reasonable grounds for believing that the transactions were suitable for the customers based upon their financial situations, investment objectives and financial needs. The findings stated that Bencivenga failed to make reasonable efforts to obtain information from customers concerning their financial status, tax status and other information used or considered to be reasonable in making recommendations to them. The findings also included that Bencivenga caused his member firm to make unlawful credit extensions in the public customers' account and engaged in "free-riding" transactions in their account.

The suspension in any capacity will be in effect from October 16, 2006 through March 15, 2007. **(NASD Case #E1020031192-01)**

James William Brophy (CRD #1144654, Registered Representative, Winston Salem, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any NASD member in any capacity for 15 business days. In light of Brophy's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Brophy consented to the described sanction and to the entry of findings that he made a recommendation to a public customer without having reasonable grounds for believing that the recommendation was suitable for the customer based on her investment objective of liquidity.

The suspension in any capacity was in effect from October 16, 2006 through November 3, 2006. **(NASD Case #2005002714501)**

Tyrone Vandelle Burroughs (CRD #2048487, Registered Representative, Hampton, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on the findings that Burroughs engaged in outside business activities for compensation without providing prompt written notification to his member firm. The findings stated that Burroughs gave false written statements to NASD. **(NASD Case# E072004082401)**

John Michael Carson (CRD #41916, Registered Representative, Fayetteville, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Carson failed to appear for an NASD on-the-record interview. **(NASD Case # E072004075201)**

Timothy George Clouse (CRD #1647709, Registered Principal, Lake Orion, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Clouse consented to the described sanction and to the entry of findings that he partially completed and signed forms for public customers to purchase securities, and altered information or inserted new information related to sales/surrender charges without informing the customers he was altering the documents. **(NASD Case #2004064801)**

David Joseph Cottam (CRD #2716994, Registered Representative, Kinnelon, New Jersey) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Cottam reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Cottam consented to the described sanctions and to the entry of findings that he improperly obtained Contingent Deferred Sales Charge (CDSC) waivers for public customers in connection with mutual fund redemptions by falsely representing, on his member firm's electronic order entry system, that the customers were disabled, when in fact, they were not. The findings stated that as a result, several mutual funds companies were deprived of fees to which they were otherwise entitled. The findings also stated that Cottam's actions caused his member firm's books and records relating to redemptions to contain false and misleading information regarding the disability status of the customers and their entitlement to a CDSC waiver.

The suspension in any capacity is in effect from October 16, 2006 through April 15, 2008. **(NASD Case #E9B2003026301)**

Claude Eugene Crump (CRD #1619470, Registered Principal, Buckeye, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$8,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Crump reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Crump consented to the described sanctions and to the entry of findings that he engaged in an outside business activity from which he received compensation and failed to provide prompt written notice to his member firm. The findings stated that Crump disseminated sales literature to public customers without his member firm's written approval.

The suspension in any capacity is in effect from October 16, 2006 through November 27, 2006. **(NASD Case #2005003350801)**

Timothy John Dabulis (CRD #2302842, Registered Representative, Pompano Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with

any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Dabulis consented to the described sanctions and to the entry of findings that he effected unauthorized transactions totaling \$5,019.88 in a public customer's account.

The suspension in any capacity was in effect from October 16, 2006 through October 27, 2006. (NASD Case #2005002672501)

Timothy James Daly (CRD #1460203, Registered Principal, Weston, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and barred from association with any NASD member in a principal capacity. The fine must be paid before Daly reassociates with any NASD member, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Daly consented to the described sanctions and to the entry of findings that he failed to establish and maintain a supervisory system and written procedures reasonably designed to supervise his firm's registered representatives' and associated persons' activities to achieve compliance with applicable securities laws, regulations and NASD rules. The findings stated that Daly, acting on his member firm's behalf, failed to conduct internal inspections of its offices of supervisory jurisdiction in accordance with the requirements of NASD Rule 3010(c). The findings also stated that Daly, acting on his member firm's behalf, failed to establish procedures for the review of transactions and its registered representatives' correspondence with the public. The findings also included that the firm, acting through Daly, operated its business without a limited principal/financial and operations principal (FINOP). (NASD Case #E112005009201)

Robert Thomas Davis III (CRD #1806076, Registered Representative, Sumter, South Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay a public customer \$104,000, plus interest, in restitution. The restitution must be paid before Davis reassociates with any NASD member, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Davis consented to the described sanctions and to the entry of findings that he withdrew \$104,000 from a public customer's annuity contract without her knowledge or approval, and converted the funds for his

own personal benefit. The findings stated that Davis entered into a settlement agreement with the customer in which he promised to repay the \$104,000, did not notify his member firm that he entered into such agreement and did not repay the customer as promised. (NASD Case #2005002609101)

Carmine DePalma (CRD #1838261, Registered Principal, Mt. Kisco, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that DePalma made an unsuitable recommendation to a public customer in light of the customer's financial status, investment objective and risk tolerance. The findings stated that DePalma engaged in private securities transactions without providing prior written notice to, and obtaining written authorization from, his member firm. The findings also stated that DePalma participated in outside business activities from which he received compensation and failed to provide prompt written notice to his member firm. The findings also included that DePalma falsified records in that he provided confirmations of the customer's investments that bore the corporate insignia of an entity that had no connection to the customer's transactions. (NASD Case #ELI20040233-01)

Jean B. Dorsainvil (CRD #4805617, Registered Representative, Bronx, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Dorsainvil consented to the described sanction and to the entry of findings that he caused checks totaling \$17,400 to be issued from public customers' annuity accounts without the customers' knowledge or consent by forging their signatures on annuity withdrawal forms, depositing the funds into his own bank accounts and subsequently withdrawing the funds for his own use. The findings stated that Dorsainvil failed to respond to NASD requests for information. (NASD Case #2006004899101)

John Alfred Elam, Jr. (CRD #1334930, Registered Principal, Virginia Beach, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Elam failed to respond to NASD requests for information and documents. The findings stated that Elam willfully failed to amend his Form U4 to disclose material information. (NASD Case #2005002600501)

Robert Eugene Elkins (CRD #2618105, Registered Representative, Redford, Michigan) was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Elkins sold, or caused to be sold, an increased number of shares of a mutual fund in a public customer's account without the customer's knowledge or consent.

The suspension in any capacity is in effect from September 18, 2006 through September 17, 2007. (NASD Case #E8A2003080701)

Phillip Lee Elliott (CRD #1410115, Registered Principal, Lexington, Kentucky) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Elliott reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Elliott consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, bond transactions in a public customer's account on a discretionary basis without the customer's prior written authorization to exercise discretion, and without his member firm's written acceptance of the account as discretionary.

The suspension in any capacity was in effect from October 16, 2006 through October 27, 2006. (NASD Case #2005002250601)

Roger Ernest Frank (CRD #1620117, Registered Representative, Riverside, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$17,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the findings, Frank consented to the described sanctions and to the entry of findings that he traded securities through an account maintained at another member firm without providing notice to his member firm or notice of his association with the firm that maintained that account. The findings stated that Frank engaged in private securities transactions without providing prior written notice to his member firm.

The suspension in any capacity is in effect from November 6, 2006 through November 27, 2006. (NASD Case #E1020041096-01)

John Joseph Fratello (CRD #213241, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Fratello reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Fratello consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

The suspension in any capacity is in effect from November 6, 2006 through February 5, 2007. (NASD Case #2005000731601)

John Sherwood Gee Jr. (CRD #873896, Registered Principal, Titusville, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any principal capacity for four months. The fine must be paid before Gee reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Gee consented to the described sanctions and to the entry of findings that his member firm, acting through Gee, did not have an adequate supervisory system and procedures reasonably designed to oversee the trading activities of its registered representatives at the firm's FAC, referred to within the firm as ISAs. The findings also stated that the firm, acting through Gee, failed to establish and maintain a supervisory system and written procedures reasonably designed to achieve compliance with NASD Rule 2830.

The suspension in any principal capacity is in effect from October 2, 2006 through February 1, 2007. (NASD Case #E9B2003042106)

Kimberly Pine Hardaker (CRD #1816093, Registered Principal, Laguna Niguel, California) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Hardaker consented to the described sanction and to the entry of findings that she acted as a broker-dealer without being registered with the SEC. The findings stated that Hardaker participated in a private securities transaction, for compensation, without providing prior

written notice to, and receiving prior written approval from, her member firm. The findings also stated that Hardaker received \$543,630 from public customers for the purchase of securities and commingled the monies with unrelated funds subjecting the customer funds to a risk of loss. The findings also included that Hardaker created and mailed confirmation statements to public customers purporting to evidence the securities purchases. NASD found that on the confirmation statements Hardaker provided to the customers, she failed to disclose that the price of the shares included a one cent per share markup. **(NASD Case #20050002046-01)**

Wayne Jason Herman (CRD #4525495, Registered Representative, Hewlett, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Herman reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Herman consented to the described sanctions and to the entry of findings that he failed to amend his Form U4 to disclose material information.

The suspension in any capacity is in effect from October 2, 2006 through November 30, 2006. **(NASD Case #2006004713801)**

Timothy Martin Hughes (CRD #2161692, Registered Representative, Franklin Square, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Hughes consented to the described sanction and to the entry of findings that he failed to appear for an NASD on-the-record interview. **(NASD Case #20050012141-04)**

Linda Carol Hopkins (CRD #1872850, Registered Principal, Aurora, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Hopkins reassociates with any NASD member following the suspension, or before she requests relief from any statutory disqualification. Without admitting or denying the findings, Hopkins consented to the described sanctions and to the entry

of findings that she failed to respond to NASD requests for information in a timely manner.

The suspension in any capacity is in effect from October 16, 2006 through October 15, 2007. **(NASD Case #E8A2004026302)**

Stacie Anne Hopkins (ICRD #1288359, Registered Principal, Queensburg, New York) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Hopkins consented to the described sanction and to the entry of findings that she failed to appear for an NASD on-the-record interview. **(NASD Case #20050005515-02)**

Ryan Michael Jindra (CRD #4085610, Registered Principal, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Jindra reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Jindra consented to the described sanctions and to the entry of findings that he participated in outside business activities, for compensation, without providing his member firm with prompt written notice.

The suspension in any capacity is in effect from October 16, 2006 through November 27, 2006. **(NASD Case #20060045274-01)**

Marvin Ray Koerselman (CRD #1195716, Registered Representative, Westminster, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Koerselman reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Koerselman consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed to provide his member firm with prompt written notice. The findings stated that Koerselman completed and submitted questionnaires to his member firm wherein he falsely indicated that he was complying with the firm's

requirement that he not accept customer checks made payable to him.

The suspension in any capacity is in effect from October 16, 2006 through January 15, 2007. **(NASD Case #2005001737201)**

William Michael Kuether (CRD #4897471, Associated Person, Clear Lake, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Kuether consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. The findings stated that Kuether failed to respond truthfully to an NASD request for information and failed to respond to subsequent requests for information. **(NASD Case #20050013765-01)**

Gary Lynn Lancaster (CRD #2730640, Registered Representative, Vancouver, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Lancaster consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with written notice. **(NASD Case #20050034080-01)**

David John Leyshon (CRD #1146050, Registered Representative, Peoria, Arizona) was barred from association with any NASD member in any capacity. The sanction was based on findings that Leyshon recommended and executed securities transactions in a public customer's account without having a reasonable basis for believing that his recommendations to the customer were suitable based on the account's turnover rate, short-term nature of the trading and the cost-to-equity ratio. The findings stated that Leyshon recommended and effected an excessive number of trades in the customer's account in complete disregard for her interests. The findings also stated that Leyshon executed securities transactions in the customer's account without the customer's prior authorization. The findings also included that Leyshon intentionally submitted false customer information to his member firm; this caused its records to be inaccurate and misleading. NASD found that Leyshon failed to respond to NASD requests for information. **(NASD Case #E3A2004035601)**

Melissa A. Licht (CRD #4470617, Registered Representative, Pittsburgh, Pennsylvania) submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Licht consented to the described sanction and to the entry of findings that she forged signatures on blank checks her supervisor owned that pertained to an account at the firm, made the checks payable to herself in the total amount of \$8,500, endorsed the checks and deposited them into her personal account without her supervisor's authorization or consent. The findings stated that Licht failed to respond to NASD requests for information. **(NASD Case #2005002708301)**

Peter J. Maldjian (CRD #4471819, Registered Principal, Brielle, New Jersey) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Maldjian consented to the described sanctions and to the entry of findings that he created and submitted a fictitious certificate of formation for a limited liability company to his member firm in attempt to open a brokerage account at his member firm, used the business filing number from another *bona-fide* limited liability company and replicated the New Jersey State Treasurer "filed" stamp. The findings stated that the false certificate of formation gave the impression that the firm was a *bona-fide* New Jersey established limited liability company, when in fact it was not.

The suspension in any capacity is in effect from October 16, 2006 through January 15, 2007. **(NASD Case #E9B2004028401)**

William Andrew Malloy (CRD #1492864, Registered Principal, Matthews, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in a principal or supervisory capacity. Without admitting or denying the findings, Malloy consented to the described sanction and to the entry of findings that he failed to perform branch audits and failed to conduct regular compliance reviews of trading activity in customer accounts as his firm's written supervisory procedures required. **(NASD Case #20050000286-02)**

Marqusia Shanti Melton (CRD #4891774, Associated Person, Milwaukee, Wisconsin) was barred from association with any NASD member in any capacity. The sanction was based on findings that Melton failed to respond to NASD requests for information. The findings stated that Melton failed to disclose material information on her Form U4. **(NASD Case #2005000725701)**

Corey Dwayne Minor (CRD #3136902, Registered Principal, DeSoto, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Minor consented to the described sanction and to the entry of findings that he misused public customer funds by depositing \$18,800 designated for the purchase of corporate bonds into an account he controlled, then sent, or caused to be sent, account statements to customers falsely showing that he had purchased the bonds. The findings stated that Minor failed to timely and completely respond to NASD requests for documents. **(NASD Case #2005002299901)**

Mary Ann Naventi (CRD #2656084, Registered Principal, New Milford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Naventi consented to the described sanction and to the entry of findings that she falsely notarized the signatures of persons on deeds and a mortgage document without having actually witnessed the signatures. **(NASD Case #2006004215401)**

Hung The Nguyen (CRD #2532462, Registered Representative, Orlando, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Nguyen reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. The sanctions were based on findings that Nguyen failed to disclose his activities relating to an outside securities account to his member firm.

The suspension in any capacity was effective from October 2, 2006 through November 10, 2006. **(NASD Case #E072004087801)**

Corey C. Ohle (CRD #4937958, Registered Representative, River Ridge, Louisiana) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Ohle consented to the described sanction and to the entry of findings that he withdrew \$2,000 from a public customer's savings account without the customer's knowledge or authorization and converted the funds to his own use and benefit. The findings stated that Ohle failed to respond to NASD requests for information. **(NASD Case #2006004899801)**

David John Palen (CRD #2321162, Registered Representative, Scottsdale, Arizona) was barred from association with any NASD member in any capacity. The sanction was based on findings that Palen withdrew approximately \$203,000 from public customer accounts to pay for financial planning fees that the customers had not authorized or approved. The complaint alleges that Palen signed a public customer's name to an advisory service agreement without the customer's authorization or consent and submitted it to his member firm. The complaint also alleges that Palen failed to appear for an NASD on-the-record interview. **(NASD Case #E3A2004036501)**

Samuel Conant Parks (CRD #602872, Registered Representative, Kingston, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Parks consented to the described sanction and to the entry of findings that he, intentionally or recklessly, failed to disclose that he had received compensation from the issuer for his recommendations and sales of a stock to public customers. The findings stated that Parks failed to disclose conflict of interest and compensation to customers in that he knew, or had reason to know, that the agreement to compensate him for the sale of the stock and subsequent payments to him created an actual material conflict of interest at the time of he published research reports regarding the stock. The findings also stated that Parks participated in private securities transactions, for compensation, without providing prior notice to, and receiving approval from, his member firm. The findings also included that Parks opened an account with another firm without providing prior notification to his member firm or of his

association with the other member firm, and falsely stated that no NASD registered person had an interest in the account on a new account signature card. **(NASD Case #E3B2004021902)**

James Francis Queeny (CRD #1088832, Registered Representative, Duxbury, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$56,000, of which \$51,000 is disgorgement of commission, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the findings, Queeny consented to the described sanctions and to the entry of findings that he participated in private securities transaction without his member firm's approval.

The suspension in any capacity was in effect from October 16, 2006 through November 14, 2006. **(NASD Case #E112004031101)**

David G. Rincon (CRD #4598476, Registered Representative, Westbury, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Rincon reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Rincon consented to the described sanctions and to the entry of findings that he provided a public customer with a document that contained misleading statements. The findings stated that Rincon failed to respond to the customer's request to enter stop loss orders for positions in the customer's account.

The suspension in any capacity will be in effect from October 2, 2006 through November 30, 2006. **(NASD Case #20050010905-01)**

Richard Lewis Rosen (CRD #1643922, Registered Principal, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that a member firm, acting through Rosen, served as a broker for transactions that involved unregistered securities for which Rosen received commissions. The findings stated that a member firm, acting through Rosen, violated its membership agreement with NASD and effected material changes in his member firm's business

operations without filing an application for approval with NASD. The findings also stated that Rosen failed to complete the regulatory element of NASD's Continuing Education requirement, which caused his registration to be inactive while he continued to effect securities transactions and serve as a president of the firm. The findings also included that the firm, acting through Rosen, effected securities transactions while failing to meet its minimum net capital requirement. NASD found that the firm, acting through Rosen, did not have an adequate system in place for the retention of electronic mail, failed to designate a FINOP for more than a year, failed to create and maintain a general ledger, and to create records that reflected the firm's assets and liabilities, income and expenses and capital accounts. **(NASD Case #E102002179201)**

Robert Michael Ryerson (CRD #1224662, Registered Principal, Freehold, New Jersey) was fined \$230,000, suspended from association with any NASD member in any capacity for two years and ordered to re-qualify in all capacities for engaging in private securities transactions. Ryerson was also fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days for payment of commissions to an unregistered entity. The suspensions shall run concurrently. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Ryerson engaged in private securities transactions, for compensation, without providing prior written notice to, and receiving prior written approval from, his member firm. The findings also stated that Ryerson paid \$100,000 in commissions to a non-member firm in connection with variable annuity referrals that he had received. Finally, the findings stated that Ryerson failed to fully and promptly provide on-the-record testimony NASD requested. No additional sanction, however, was imposed for Ryerson's failure to provide required testimony.

The suspension in any capacity is in effect from October 2, 2006 through October 1, 2008. **(NASD Case #C9B20040033)**

Arun Kumar Salwan (CRD #4288865, Registered Representative, Schaumburg, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Salwan reassociates with any NASD

member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Salwan consented to the described sanctions and to the entry of findings that he affixed a public customer's name on a switch letter without the customer's knowledge or consent in order to document the customer's previous agreement to a change in investments that had already been executed.

The suspension in any capacity is in effect from October 2, 2006 through November 30, 2006. **(NASD Case #2005002557301)**

Jody Gordon Scheiman (CRD #1124370, Registered Principal, Columbus, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Scheiman consented to the described sanctions and to the entry of findings that her housekeeper posed as her aunt on a telephone call to obtain information about an insurance policy the aunt owned. The findings stated that Scheiman misled her member firm about the phone call her aunt purportedly made.

The suspension in any capacity was in effect from October 2, 2006 through October 13, 2006. **(NASD Case #2005002264901)**

Lee Gerald Schroeder (CRD #3270789, Registered Principal, Platteville, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Schroeder consented to the described sanction and to the entry of findings that he failed to disclose a material fact on his Form U4. The findings stated that Schroeder failed to timely respond to NASD requests for information and failed to appear for an NASD on-the-record interview. **(NASD Case #20050026087-01)**

Nicholas Raymond Sciascia (CRD #2813945, Registered Representative, Howard Beach, New York) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Sciascia failed to respond to NASD requests to appear for on-the-record interviews. **(NASD Case #CMS20040069)**

Thomas John Scipione (CRD #809209, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Scipione reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Scipione consented to the described sanctions and to the entry of findings that he made a recommendation to a public customer without having reasonable grounds for believing that the recommendation was suitable based upon the customer's financial situation, investment objectives and needs. The findings stated that Scipione submitted to an insurance company an equity indexed annuity application a public customer executed in the state of New York, on which Scipione falsely represented that the customer executed the application in the state of Florida in order to circumvent the requirement that the insurance company be registered in New York to offer its products.

The suspension in any capacity is in effect from October 16, 2006 through October 15, 2008. **(NASD Case #E1020040957-01)**

Harold Stephen Simpson, Sr. (CRD #1071796, Registered Representative, Miramar Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Simpson consented to the described sanction and to the entry of findings that he received a \$6,250 check from a public customer for investment purposes but used the funds for his own use and benefit without the customer's authorization or knowledge. The findings stated that Simpson created and delivered a false certificate of stock for a non-existent company to the customer in order to convince the customer that he had invested the funds as directed. The findings also stated that Simpson failed to disclose in writing to his member firm the existence of a brokerage account in which he held a beneficial interest and failed to notify his member firm in writing of his association with another firm. **(NASD Case #2006004213501)**

David Parker Smithey (CRD #4137601, Associated Person, Irvine, California) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two years and ordered to pay \$525,000, plus interest, in restitution to a public customer. The restitution must be paid before Smithey reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Smithey consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to, and receive approval from, his member firm.

The suspension in any capacity is in effect from October 16, 2006 through October 15, 2008. **(NASD Case #E0220040502-01)**

Kenneth Lewis Sojka (CRD #1077371, Registered Principal, Pound Ridge, New York) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Sojka reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the allegations, Sojka consented to the described sanctions and to the entry of findings that he directed, encouraged and/or permitted individuals to sign public customers' names on Account Transfer Forms, making the documents false and inaccurate, without the public customers' authorization or consent. The findings stated that Sojka promoted and maintained a workplace environment in which individuals were directed, encouraged and/or permitted to affix customer signatures to firm documents without the customers' authorization or consent. The findings also stated that Sojka settled a customer complaint by paying the customer \$592.40 without his member firm's knowledge or approval.

The suspension in any capacity is in effect from October 16, 2006 through July 15, 2007. **(NASD Case #2005002485301)**

Andrew Mark Stinson (CRD #4814141, Registered Principal, Fremont, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine

must be paid before Stinson reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the findings, Stinson consented to the described sanctions and to the entry of findings that he cut a public customer's signature out of a copy of an original state-sponsored 529 plan account application and pasted it in onto an amended application, then submitted it to his member firm for processing.

The suspension in any capacity is in effect from October 16, 2006 through December 14, 2006. **(NASD Case #20060049044-01)**

Richard Joseph Trivilino (CRD #1498974, Registered Representative, Beaver Falls, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the findings, Trivilino consented to the described sanction and to the entry of findings that he solicited \$6,850.62 from a public customer for investment purposes, deposited the funds into his personal bank account and converted the funds to his own purposes. **(NASD Case #2006004937501)**

Brian T. Ungerer (CRD #4414752, Registered Representative, Middletown, Delaware) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the findings, Ungerer consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm.

The suspension in any capacity is in effect from November 6, 2006 through January 4, 2007. **(NASD Case #2005002435801)**

Mark Allen Upchurch (CRD #2937074, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Upchurch reassociates with any NASD member following the suspension, or before he requests relief from any statutory disqualification. Without admitting or denying the finding, Upchurch consented to the described sanctions and to the entry

of findings that he signed a public customer's name to an account transfer form without her permission.

The suspension in any capacity is in effect from October 16, 2006 through November 27, 2006. **(NASD Case #2006004847601)**

Dennis Russell Weddle II (CRD #2671849, Registered Representative, Henderson, Nevada) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 60 days. After consideration of a 51-day suspension his member firm imposed for the same conduct, NASD has determined to credit Weddle with 20 days; accordingly, Weddle is required to serve 40 days of the suspension. Without admitting or denying the findings, Weddle consented to the described sanctions and to the entry of findings that he affixed customer signatures to documents concerning financial planning services.

The suspension in any capacity is in effect from October 16, 2006 through November 24, 2006. **(NASD Case #20050012479-01)**

Greg B. Whittington (CRD #2544030, Registered Representative, Elkhart, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the findings, Whittington consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without providing prior written notice to his member firm.

The suspension in any capacity was in effect from October 16, 2006 through October 27, 2006. **(NASD Case #2005000731201)**

Decisions Issued

OHO has issued the following decisions, which have been appealed to or called for review by the NAC as of October 6, 2006. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decision. An initial decision whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

American Funds Distributors, Inc. (CRD #6247, Los Angeles, California) was censured and fined \$5,000,000. The sanctions were based on findings that the firm, as the principal underwriter and distributor of American Funds, entered into yearly sponsorship arrangements with NASD member firms who were top sellers of American Funds. The findings stated that the firm requested and arranged for the payment of specific amounts of trading business to the NASD member firms conditioned on their sales of American Funds.

The firm has appealed this decision to the NAC, and the sanctions are not in effect pending review. **(NASD Case #CE3050003)**

Anthony Cipriano (CRD #2998665, Registered Representative, West Islip, New York) was fined \$40,000, suspended from association with any NASD member in any capacity for two years and required to re-qualify by examination in all capacities. The sanctions were based on findings that Cipriano made baseless price predictions regarding a security to customers, failed to ensure that his representations to customers had a reasonable basis and failed to disclose material information concerning a securities issuer.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C0720050029)**

Jason Aoam Craig (CRD #4016543, Registered Representative, Washington Township, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that he failed to disclose material information on his Form U4.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. **(NASD Case #E8A2004095901)**

Stephen Patrick Dunbar (CRD #2041644, Registered Representative, Atlanta, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Dunbar's recommendations and trading activity were unsuitable for public customers. The findings stated that Dunbar provided the customers with false and misleading account statements and exercised discretionary authority without the customers' written authorization.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C0720050050)

Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Mustapha Youssef Aljaroudi (CRD #3274506, Registered Representative, Miami, Florida) was named as a respondent in an NASD complaint alleging that he engaged in a pattern of misconduct that included falsification of essential public customer information on a new account opening form, thereby causing his firm's books and records to be inaccurate. The complaint alleged that Aljaroudi engaged in an unauthorized sale of stock in a customer's account without the customer's knowledge, authorization or consent. The complaint also alleged that Aljaroudi converted customer funds in that he received a customer's check from a clearing firm, endorsed the check without the customer's knowledge, authorization or consent and deposited the check into his personal bank account without repaying the customer or accounting for the funds. (NASD Case #2005001185301)

Carolyn Sue Callahan (CRD #4115887, Registered Representative, South Bend, Indiana) was named as a respondent in an NASD complaint alleging that she accepted checks totaling \$45,000 from a public customer to be invested in mutual funds, forged the endorsement of the fund group and deposited the checks into her business checking account. (NASD Case #2005000724301)

Vikram S. Manhas (CRD #2518451, Registered Representative, New York, New York) was named as a respondent in an NASD complaint alleging that without a public customer's knowledge, consent or authorization, Manhas prepared or caused the

preparation of forms purportedly signed by the customer, requesting that the customer's assets be transferred into an account Manhas owned. The complaint alleges that Manhas sold the customer's assets and the proceeds from the sales were withdrawn from his account by checks and wire transfers, thereby converting the customer's securities/funds totaling \$240,000. The complaint also alleges that he facilitated the submission of various forms that were purportedly from the customer that contained false information and the customer's forged signature. The complaint further alleges that Manhas failed to respond to NASD requests for information. (NASD Case #20050027081-01)

Masajji Edward Patrick (CRD #4767451, Registered Representative, Chicago, Illinois) was named as a respondent in a complaint alleging that he created fictitious customers using other individuals' Social Security numbers and opened checking accounts in their names. The complaint alleges that Patrick transferred \$57,500 from public customers' dormant accounts to the fictitious checking accounts, thereby using the customers' funds for his own use or benefit, or for the benefit of someone other than the customers, without the customers' knowledge or consent. The complaint also alleges that Patrick failed to respond to NASD requests for information. (NASD Case #2006005120401)

Manuel Rose III (CRD #1424164, Registered Representative, Grand Rapids, Michigan) was named as a respondent in an NASD complaint alleging that he received \$22,000 from a public customer for investment purposes, deposited the funds into his checking account and failed to make any investment on the customer's behalf. The complaint alleges that Rose failed to respond to NASD requests for information. (NASD Case #2005000760301)

Joseph Andrew Zaragosa Jr. (CRD #2417735, Registered Representative, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he engaged in outside business activity, for compensation, without giving prompt written notice to his member firm. The complaint alleges that Zaragosa effected discretionary transactions in a public customer's account without the customer's prior written authorization, and without his member firm's prior written acceptance of the account as discretionary. The complaint also alleges that Zaragosa effected

numerous transactions in a public customer's account without having reasonable grounds for believing that the recommendations were suitable for the customer in view of the size and frequency of the transactions and the nature of the account. The complaint further alleges that Zaragosa failed to submit pieces of email to his member firm for review and approval before sending the correspondence to a public customer. (NASD Case #E8A2002109804)

Firms Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Grayson Financial LLC
Red Bank, New Jersey
(October 23, 2006)

Jersey Shore Trading Group, Inc.
Red Bank, New Jersey
(October 23, 2006)

Firms Suspended for Failure to Supply Financial Information

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Doral Securities, Inc.
Puerto Nuevo, Puerto Rico
(May 15, 2006 to October 30, 2006)

Dublind Securities, Inc.
Greenwich, Connecticut
(May 10, 2005 to October 5, 2006)

Firm Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Amerifinancial fka Fareri Financial Services, Inc.
Boca Raton, Florida
(September 27, 2006 to October 11, 2006)

Black Knight Ventures, Inc.
Tampa, Florida
(October 10, 2006)

Financial Design, Inc.
Baton Rouge, Louisiana
(October 10, 2006)

Kirlin Securities, Inc.
Syosett, New York
(October 20, 2006 to October 23, 2006)

Pacvest Associates, Inc.
Woodstock, Connecticut
(October 20, 2006)

Individuals Barred Pursuant to NASD Rule 9552(h)

Kevin Erik Adams
Fresno, California
(October 24, 2006)

Gilbert Cadavillo Cabusas
Bairwood, New York
(October 31, 2006)

Donovan Britt Craig
Atlanta, Georgia
(October 10, 2006)

Coleman James Flaherty III
South Boston, Massachusetts
(October 4, 2006)

Peter Anthony Mazzara
Chicago, Illinois
(October 2, 2006)

Daniel Lee Rodger
Dallas, Texas
(October 10, 2006)

Maria D. Roldan
Coconut Creek, Florida
(October 6, 2006)

Bryan Keith Smith
Palatka, Florida
(October 31, 2006)

Individuals Suspended Pursuant to NASD Rule 9552(d)

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Randall Scott Humphrey
Scottsdale, Arizona
(October 4, 2006)

Christopher Mark Ostoich
Fort Wright, Kentucky
(October 23, 2006)

Jon Manuel Palacios
San Bernardino, California
(October 25, 2006)

Individual Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Francis Hartley-Edwards
San Francisco, California
(October 11, 2006)

Individual Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

John F. Helbock
Holmdel, New Jersey
(October 23, 2006)

Individuals Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply with an Arbitration Award or a Settlement Agreement

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Dean Russel Baker
Coral Springs, Florida
(October 2, 2006)

Joshua Robinson Ballinger
Ft. Wayne, Indiana
(October 6, 2006)

Gianfranco Carbonara
Flushing, New York
(October 6, 2006)

David Walter Coyman
Long Valley, New Jersey
(October 2, 2006)

John Joseph Donadio
Staten Island, New York
(October 6, 2006)

David P. Gardner
New Rochelle, New York
(October 2, 2006)

Michael Joseph Hernandez
Dallas, Texas
(October 6, 2006)

Scott Fitzgerald Koch
Riverside, Connecticut
(October 2, 2006)

Michael Louis Lieb
Kettering, Ohio
(October 2, 2006)

Jeffery A. Mascio
Highlands Ranch, Colorado
(October 9, 2006)

Padraig Conrad McGlynn
Maspeth, New York
(October 6, 2006)

Sean Fitzgerald Mescall
Denver, North Carolina
(October 9, 2006)

Brett Wilson Pieratt
Highlands Ranch, Colorado
(October 9, 2006)

Daniel Joseph Pyle
E. Atlantic Beach, New York
(October 6, 2006 to October 31, 2006)

Richard Lee Salo
Vancouver, Washington
(October 6, 2006)

Michael Ray Scheurich
Boca Raton, Florida
(October 6, 2006)

Ronald Colon Siracusa
Holbrook, New York
(October 9, 2006)

Roman Thaker
New York, New York
(October 6, 2006)

Robert John Vitale
Parkland, Florida
(October 2, 2006)

Charles William Wannen III
Hicksville, New York
(October 13, 2006 to October 26, 2006)

Jeffrey S. Weick
Margate, Florida
(October 2, 2006)

NASD Fines Citizens Bank Affiliate, CCO Investment Services Corp., \$850,000 For Supervisory, Recordkeeping, Telemarketing, Other Violations

Firm Failed to Implement Procedures Relating to Variable Annuity Sales to Elderly

NASD has fined CCO Investment Services Corp., a wholly-owned subsidiary of Citizens Bank of Rhode Island, a total of \$850,000 for failing to establish, maintain and enforce a reasonably designed supervisory system and written procedures relating to a series of issues-including customer suitability reviews, telemarketing compliance, internal inspections, review of written correspondence, registration of offices and review and approval of 529 Plan business.

NASD found that CCO Investment Services also failed to maintain, among other things, business-related email and records of compensation given to its brokers by issuers of variable contracts or mutual funds.

In addition to the fine, NASD ordered CCO Investment Services to review its supervisory system and procedures concerning the preservation of electronic communications, customer suitability reviews, telemarketing, internal inspections, pre-registration Central Registration Depository (Web CRD) searches, review of written correspondence, registration of offices, and review of customer fund-direct 529 Plan business for compliance with NASD rules and federal securities laws and regulations. The firm was also ordered to undertake a review of the resources it devotes to compliance, assess the adequacy of such resource allocations and make written recommendations concerning its resource needs in order to comply with the laws, regulations and rules concerning those areas.

"Like any securities firm, bank-affiliated broker-dealers must have adequate supervisory systems and controls for ensuring compliance with regulatory requirements," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "This bank-affiliated firm missed the mark with regard to several important requirements, including some that impacted retirees-an especially vulnerable group for whom NASD rules, the federal securities laws and the telemarketing laws provide valuable protections."

NASD found that from October 2003 through March 2005, CCO Investment Services' suitability reviews of variable annuity contract sales were not reasonably designed to prevent and detect sales practice violations. For example, although the firm utilized surveillance reports and its operations personnel reviewed variable annuity applications before the transactions were completed, it inconsistently provided for reasonable follow-up and review to ensure that noted exceptions were adequately addressed. Moreover, although the firm had some policies related to variable annuity sales to elderly clients, the firm failed to provide for reasonable follow-up and review to ensure that those policies were implemented for these clients. To the extent that the firm had customer suitability review procedures, such as mandating the use of customer financial profile forms, it did not consistently enforce those procedures. As a result, customer information that could have assisted registered persons and the firm in assessing suitability was not always available.

NASD also found several violations relating to the firm's telemarketing efforts. Throughout the relevant period, both CCO Investment Services registered representatives and affiliated bank employees made telephone calls to prospective customers during "call nights." The firm required affiliated bank employees, who were not registered representatives, to use pre-approved scripts and not to discuss specific financial products with customers. But the firm had no supervisory system or written procedures for monitoring compliance with its supervisory procedures in this area. The firm had no reasonable way of even tracking the occurrence of call nights or otherwise monitoring compliance with its procedures. Moreover, during the relevant period, the firm failed to ensure that bank customers called had not registered on the Federal Trade Commission's national Do-Not-Call registry.

In addition, NASD found that the firm's supervisory system and written procedures were not reasonably designed to ensure that searches of the registration records of prospective new hires on Web CRD were performed with the permission of those individuals. During the relevant period, CCO certified to Web CRD that it had obtained the required written consents for its pre-registration searches, but for 239 of those searches the firm had failed to obtain the required consent or lacked the necessary documentation.

In concluding this settlement, CCO neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD Fines Oppenheimer and Co. \$800,000 for Failing to Respond to Regulatory Requests, Failing to Report Municipal Transactions Accurately

Firm Also Failed to Retain Internal Email

NASD has fined New York's Oppenheimer & Co. Inc. \$800,000 for failures to respond to regulatory requests for information; failures to report, or to report timely and accurately, thousands of municipal securities transactions, and failure to retain business-related internal email.

In addition to the fine, Oppenheimer is obligated to retain, at its own expense, outside counsel to review, modify, and enhance Oppenheimer's written supervisory procedures related to reporting municipal securities transactions and responding to regulatory requests for information, including requests from NASD.

The sanctions imposed stem from the settlement of a complaint NASD filed against Oppenheimer in April 2005.

"Firms must respond timely and completely to regulatory requests, report transactions timely and accurately, and maintain business-related electronic communications," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "Oppenheimer repeatedly failed to comply with these fundamental regulatory obligations."

NASD found that Oppenheimer failed to respond timely and fully to a September 2004 NASD request that it provide information about its retention of electronic communications for 20 employees who traded municipal securities and whose emails were therefore necessary to an NASD investigation into Oppenheimer's trade reporting deficiencies. In May 2005, Oppenheimer responded in writing to only one portion of the September 2004 request, but never provided information responsive to the balance of NASD's request.

Oppenheimer also failed to respond timely to an August 2003 request for trade confirmations for municipal securities transactions. NASD renewed its request for confirmations on three occasions, yet Oppenheimer did not produce all confirmations until more than a year after the original request.

NASD also found that from January 2003 through May 2004, Oppenheimer failed to timely report to the Municipal Securities Rulemaking Board (MSRB) more than 6,100 interdealer municipal securities transactions and eventually reported hundreds of these transactions inaccurately. In addition, during May and part of June 2003, the firm failed to accurately report to MSRB the price, time, commission or capacity in which it acted in more than 1,500 customer trades. During the same time period, it failed to report more than 600 municipal securities transactions with customers.

In settling these matters, Oppenheimer neither admitted nor denied the charges, but consented to the entry of NASD's findings.

McLaughlin, Piven and Vogel Securities Agrees to Repay Customers Overcharged for Transferring Accounts

NASD Fines Firm \$50,000, Orders Compliance Review by Independent Consultant

NASD announced that McLaughlin, Piven and Vogel Securities, Inc. (MPV) of New York has agreed to pay restitution to customers who were charged excessive and unreasonable fees in connection with the transfer of their brokerage accounts to other broker-dealers through the Automated Customer Account Transfer System (ACATS). NASD has identified more than 1,500 customers who were overcharged.

ACATS is administered by the National Securities Clearing Corporation. It was designed to expedite the transfer of customer accounts between participants in a registered clearing agency, to alleviate the demands of manual processing of account transfers on firms and to reduce costs.

NASD also fined MPV \$50,000 and ordered the firm to retain an independent consultant to determine the amount of restitution due customers and to review and make recommendations concerning the adequacy of the

firm's current policies, systems, procedures and training concerning compliance with NASD's rules relating to charges for services performed.

"Fees and charges assessed by firms must be reasonable and, in the case of account transfers, bear a relationship to the actual cost of the services provided," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "In this case, the firm attributed a portion of the ACATS fees it charged—as much as \$295—to its costs of investigating brokers whose customers had left the firm. This was an utterly improper assessment of an ACATS fee and was excessive, given that MPV was charged as little as \$35 by its clearing firm to process these account transfers."

NASD sampled more than 1,600 registered firms and found that ACATS fees imposed on customers typically run no higher than \$50, with the firm retaining \$25 or less of that fee.

NASD rules require that charges for services be "reasonable and not unfairly discriminatory between customers." Additionally, NASD has advised registered firms, through Notices to Members, that charges for services must be fair under the relevant circumstances, that each member "should be prepared to justify that its prices are fair as to each customer and transaction" and that ACATS fees should be related to the actual costs of the account transfers.

NASD found that between April 2002 and September 2006, MPV violated NASD's rules by charging more than 1,500 customer accounts excessive and unreasonable account transfer fees. Between April 2002 and mid-April 2006, the firm charged customers \$295 per account transferred. MPV kept, after clearing firm charges, between \$235 and \$260 per account. Between mid-April and September 2006, the firm charged customers \$195 per account transferred and retained, after clearing charges, \$135 per account.

MPV charged the high transfer fees, in part, to offset the firm's costs of investigating departing brokers, to determine whether they had made false statements to persuade customers to transfer their accounts in violation of the departing brokers' employment agreements. NASD found that the respective \$295 and \$195 transfer fees were excessive, unreasonable and largely unrelated to MPV's actual costs of processing

account transfers through ACATS. Any costs associated with investigating possible impropriety by departing brokers were unrelated to MPV's actual costs of effecting account transfers and may not be shifted to the customers.

In settling with NASD, MPV neither admitted nor denied the allegations, but consented to the entry of NASD's findings.

NASD Fines Hedge Fund Manager \$2.25 Million for Deceptive Market Timing in Variable Annuities

NASD's Largest Market Timing Fine Ever Against an Individual; Probe Continues Into Activities of Individual Brokers

NASD imposed its largest fine ever against an individual for market timing—a \$2.25 million sanction against hedge fund manager Paul Saunders, a registered broker who is Chairman, CEO and majority owner of James River Capital Corporation (JRCC) of Richmond, VA. The fine, for using deceptive practices to market time through variable annuities, includes disgorgement of approximately \$750,000 in illicit profits. NASD also suspended Saunders for 60 days.

NASD's investigation into the activities of the brokers who assisted Saunders' market timing is continuing.

"Deceptive market timing designed to exceed prospectus limitations and evade insurance company and mutual fund restrictions not only violates ethical standards but may also harm investors," said James S. Shorris, Executive Vice President and Head of Enforcement. "The enforcement action announced today makes clear that brokers, including those who operate as hedge fund managers, will be held accountable for this kind of misconduct and will be required to disgorge their profits and pay a substantial penalty."

JRCC is general partner and trading manager of the Jazzman Fund, a hedge fund established specifically to engage in market timing. After personally investing in Jazzman, Saunders, through JRCC, created 19 limited partnerships under Jazzman to increase the hedge fund's ability to market time mutual fund sub-accounts of variable annuities. While each Jazzman partnership appeared to be a separate entity, with a different name

and tax identification number, the partnerships all had common owners—a fact that Saunders did not disclose to insurance companies that offered the variable annuities.

NASD found that from October 2001 through September 2003, Saunders used these Jazzman partnerships to engage in numerous deceptive practices to evade attempts by insurance companies to block or restrict his market timing in sub-accounts of variable annuities.

Saunders opened 20 different accounts for the Jazzman partnerships at one broker-dealer and commenced market timing through variable annuity sub-accounts, sometimes simultaneously purchasing contracts and trading in the same annuity through several Jazzman partnerships. After receiving communications from insurance companies restricting further market timing, the Jazzman hedge fund, under Saunders' direction, used three deceptive practices to continue market timing:

- Saunders purchased contracts in the same variable annuity for other Jazzman partnerships and continued trading through those contracts;
- Saunders obtained additional contracts in the same variable annuity, but changed the name of the annuitant. All of the annuitants were actually employees of entities Saunders controlled; and
- When certain insurance companies rejected an annuity contract because it was purchased with a large initial investment, Saunders purchased another contract with a much smaller initial investment. When that contract was accepted, Saunders transferred funds from accounts of other related Jazzman partnerships to the accepted contract and then began market timing in the contract's sub-accounts.

These practices enabled Jazzman to execute approximately 1,000 variable annuity transactions, well in excess of insurance company limits for any single entity. Saunders personally made approximately \$750,000 in illicit profits from the deceptive conduct.

In settling with NASD, Saunders neither admitted nor denied the allegations, but consented to the entry of NASD's findings.